

Statement of the Case.

THE CHIEF JUSTICE: The motion to dismiss is granted upon the authority of *Richmond & Danville Railroad v. Thouron*, 134 U. S. 45; *Gurnee v. Patrick County*, 137 U. S. 141; *McLish v. Roff*, 141 U. S. 661; *Chicago, St. Paul &c. Railway v. Roberts*, 141 U. S. 690. *Dismissed.*

In re ENGLS, Petitioner.

ORIGINAL.

No number. Submitted November 23, 1892. — Decided December 5, 1892.

On the authority of *In re Fassett*, 142 U. S. 479, the court refuses to grant a writ of prohibition to restrain the District Court of the United States for the Eastern District of New York from taking jurisdiction of a petition of the owner of a barge for the benefit of the limited liability act, Rev. Stat. §§ 4283 to 4285, and from further proceedings thereunder.

THE petitioner filed her petition in this court, making the following averments:

I. That theretofore, on the 25th day of September, 1891, The Myers Excursion and Navigation Company filed its petition in the District Court of the United States, as owners of the barge Republic, for a limitation of liability, a copy of which is hereto attached, marked Exhibit A, and the usual monition was ordered by said District Court.

II. On the return day of said order this petitioner filed her answer to said petition, a copy of which is hereto attached, marked Exhibit B.

III. That thereafter, on the 21st day of November, 1892, said cause came on to be heard before the District Court, aforesaid, on exceptions to the jurisdiction of said court, and on motion of your petitioner to dismiss the same for want of jurisdiction, yet the said court overruled your petitioner's exceptions and denied said motion to dismiss, and ordered said cause to proceed, as will appear by a copy of said order hereto attached, marked Exhibit C. Wherefore, the said Elizabeth Engles respectfully requests that a writ of prohibition may be

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issued out of this Honorable Court to the Judge of the District Court of the United States for the Eastern District of New York, prohibiting him from further proceeding with the petition for limited liability aforesaid, and requiring him to dismiss the said proceedings.

Exhibit A set forth that the Excursion Company was the owner of the barge Republic; that in August, 1891, the barge being strong, stanch and seaworthy, and well manned and equipped, conveyed an excursion party from Brooklyn to Cold Spring grove, on Long Island; that while at the latter place a storm struck the barge with such force that the roof of the upper deck was carried away, and other injuries inflicted, thirteen persons being killed, and many injured; that these losses and injuries were due to inevitable accident, but that nevertheless many suits had been brought in the Supreme Court of New York against the company for damages suffered by reason of the injury, but that the barge had not been libelled in admiralty; that the value of the barge was not sufficient to make compensation to all who had commenced suit, and that therefore the petitioners prayed for an appraisement, a monition to all claiming to prove their claims, and an order restraining the prosecution of the suits.

Exhibit B was as follows:

The separate answer of Elizabeth Engles respectfully shows:

I. That she claims damages against the Myers Excursion and Navigation Company in the sum of \$5000, and has duly presented her claim pursuant to an order of this Court to the Commissioner Richard P. Moore, Esq., under oath, within the time limited and at the place required by order of the court.

II. That respondent is one of the parties named in schedule attached to petition herein on which the order of September 28, 1891, was granted.

III. Respondent denies, upon information and belief, the allegation in the third paragraph of petition, in words as follows:

“Said barge was fully manned and thoroughly equipped for the trip; she was tight, stanch, strong and seaworthy in all respects.”

Counsel for Petitioner.

IV. The respondent denies, on information and belief, the entire fifth paragraph of the petition.

V. The respondent denies that the barge Republic was a seagoing vessel, and also denies that she was used or employed in inland navigation, and submits to the court that it appears upon the face of the petition that the petitioners are not embraced within the provisions 4283-4289 Rev. Stat.

Exhibit C, entitled in the cause, and dated November 21, 1892, was as follows: This cause coming on to be heard this day on the petition of The Myers Excursion and Navigation Company, filed September 25, 1891, and the answers of Elizabeth Engles and others, on exceptions in the answers to the jurisdiction of this court to proceed with said petition, and on motion by the respondents to dismiss the proceedings for want of jurisdiction;

On hearing *Mr. Raphael J. Moses, Jr.*, of counsel for Elizabeth Engles and others, and *Messrs. Guggenheimer & Untermeyer*, of counsel for Nellie Schaler, and *Mr. Fernando Solinger*, of counsel for Catharine Kuntz and others, in support of the exceptions to the jurisdiction and of the motion to dismiss, and *Mr. Putnam*, of counsel for the petitioners, in opposition,

On motion of *Mr. Putnam* for the petitioners,

It is ordered, that the exceptions to the jurisdiction be overruled, and the motion to dismiss be denied, and it is further ordered that the cause proceed.

Mr. Raphael J. Moses, Jr., for the petitioner.

No one opposing.

THE CHIEF JUSTICE: Leave to file a petition for a writ of prohibition is denied upon the authority of *In re Fassett*, 142 U. S. 479, 484, and cases there cited.

Denied.